(3)
Supreme Court, U.S.
FILED
03154 1 MAR 17 2004
OFFICE OF THE CLERK

Nos. _____

In The
**Supreme Court of the United States**

**In re DONALD C. FLEMING and WILLIAM ALLEN ARNOLD,**
Defendants-Appellants-Petitioners,
*PRO SE*, NO ATTORNEYS,
ASSERTING A RIGHT OF
SELF-REPRESENTATION

**DONALD C. FLEMING and WILLIAM ALLEN ARNOLD,**
Defendants-Appellants-Petitioners,
*PRO SE*, NO ATTORNEYS,
ASSERTING A RIGHT OF
SELF-REPRESENTATION
v.
**UNITED STATES OF AMERICA,**
Plaintiff-Appellee-Respondent

ON PETITION FOR WRIT OF MANDAMUS AND
ON RULE 11 PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

**APPENDIX B (WILLIAM ALLEN ARNOLD)**

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FILED
U.S. COURT OF APPEALS ELEVENTH CIRCUIT
OCT 14 2003
THOMAS K. KAHN CLERK

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**
No. 03-12810-D

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM ALLEN ARNOLD,
JOSEPH WELBURN EVANS,

Defendants-Appellants.

On Appeal from the United States District Court for the Middle District of Florida

O R D E R:

Appellant Arnold's "(Fourth) Motion for Release Pending Appeal" is DENIED.

/s/ Ed Carnes
UNITED STATES CIRCUIT JUDGE

**Motion** The motion ruled on

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 03-12810-D

**UNITED STATES OF AMERICA**,
Plaintiff-Appellee,
v.
**WILLIAM ALLEN ARNOLD**,
Defendant-Appellant

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On appeal from the trial court, the
UNITED STATES DISTRICT COURT,
for the MIDDLE DISTRICT OF FLORIDA
Transaction No. 3:00-cr-262-J-20HTS

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## APPELLANT ARNOLD'S (FOURTH) MOTION FOR RELEASE PENDING APPEAL

(Lack of subject matter jurisdiction may be raised at any time.)

### History of this Motion

By motions not labeled as distinctly as might have been preferred (the First Motion, and then the First Amended Motion, for Relief in Equity), Arnold sought Release Pending Appeal. Those were denied, with the note that relief must first be sought in the trial court. Embarrassingly, overlooking the obvious difference with the relief requested in the Motion for Stay in the trial court and the relief sought [p. 2] here, a third effort, through reconsideration, was initiated, ending with the very same result: denied, start with the trial court.

By motion (Docket Entry 1267), filed 30 June 2003, Arnold sought Release Pending Appeal in the trial court. That motion is attached as Exhibit 8. The trial court denied the relief. That order is attached as Exhibit 9.

*See* Arnold's First Exhibit List. Exhibit 7 is the "Numerics for Arnold," originally submitted with Arnold's First Affidavit.

Exhibit 10–The Instructions for this case

Exhibit 11–18 U.S.C. § 371, Beneficiary's[1] Standard Proposed Instructions

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[1] Plaintiff, appellee, the unknown real party in interest.

Exhibit 12–IRC § 7212, Beneficiary's Standard Proposed Instructions

Exhibit 13–IRC § 7201, Beneficiary's Standard Proposed Instructions

*See also* <http://www.usdoj.gov/tax/readingroom/criminal/taxc23.htm> (DOJ discussion of § 371) ("*DOJ-§ 371*"); <http://www.usdoj.gov/tax/readingroom/criminal/taxc17.htm> (same, § 7212) ("*DOJ-§ 7212*"); <http://www.usdoj.gov/tax/readingroom/criminal/taxc08.htm> (same, § 7201) ("*DOJ-§ 7201*").

**Motion for Release Pending Appeal**

ARNOLD moves that this court grant him release pending appeal. [p. 3]

**Discussion**

**Preamble.** Count One, Ex. 4 (2 App.) Indictment 1-16 ("Count One"), the only count submitted to the advisory panel, charges a Klein conspiracy, a rather narrow and specific crime. So narrow, in fact, that KLEIN, himself, didn't commit a Klein conspiracy! Embezzlement and larceny are quite different, which is but one of the fatal flaws in the Klein conspiracy theory from its inception.

Also, there's a flagrant "claim of right" problem. The "gross *business* income" is neither FLEMING's nor ARNOLD's, but rather some entity's, or group of entities'. Further, Count One focuses entirely on *FLEMING's* "taxes," but the Judgment sentences ARNOLD on *ARNOLD's* "taxes," a charge asserted *nowhere* in the entire Indictment! Additionally, Count One seeks reinstatement of debtor's prison, by seeking criminal sanctions based upon "employment" "taxes."

**Point: Does Count One allege the Klein conspiracy it defines?**

**Standard on Review.** The sum total of all challenges in the trial court to this Indictment, by or on behalf of all the defendants in this case, is at least 61, with a few more

related motions for procedural matters. But, even if *everything* in this motion qualifies as an objection raised for the first time on appeal, this Judgment is still instantly vacated. Count One does not allege the crime defined; thus, it confers no subject matter jurisdiction.

> [p. 4] We review arguments raised for the first time on appeal for plain error. *See United States v. Swatzie*, 228 F.3d 1278, 1281 (11th Cir. 2000), *cert. denied*, 533 U.S. 953 (2001). We will find plain error only where (1) there is an error in the district court's determination; (2) the error is plain or obvious; (3) the error affects the defendant's substantial rights in that it was prejudicial and not harmless; and (4) the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. *See United States v. Chisholm*, 73 F.3d 304, 307 (11th Cir. 1996).

*United States v. Clark*, 274 F.3d 1325, 1326 (11th Cir. 2001).

Allowing Count One to go to trial, much less sentencing anyone based upon it, is error in the district court's determination (of subject matter jurisdiction). The difference between embezzlement and larceny is plain and obvious. Being deprived of liberty and property for a crime not even alleged, much less proved, affects the defendant's substantial rights in that such is prejudicial. The error not only seriously affects the fairness, integrity or public reputation of judicial proceedings in *this* proceeding, but also gives pause for reflection of the Klein conspiracies charged for the past 50 years. (Klein indictment filed 17 Sep 1954).

**Klein Conspiracy.** Here's the key Indictment language:

> to defraud the United States Department of the Treasury and the Internal Revenue Service (IRS) ... for the purpose of impeding, impairing, defeating, and

> otherwise obstructing the lawful functions of the IRS in the ascertainment, computation, assessment, and collection of federal taxes ... through deceit, craft, trickery and dishonest means.

Count One (p. 2 ¶ A). The Instructions are virtually identical. Ex. 10 (pp. 6-7). Also, *cf.* Ex. 10 (pp. 7-10), *with* Ex. 11 (thus, the Indictment and the Instructions [p. 5] look to § 371 for the Klein conspiracy; thus, not § 7201, and not § 7212).

No Return? No Case. Before addressing the fatal foundational problems with the Klein conspiracy theory, there's a "no evidence" factual matter that sets the stage well. *False return* and *no return* cases differ greatly. The *Klein* court addressed this distinction directly and from the outset. "Mere failure to disclose income would not be sufficient to show the crime charged of defrauding the United States under 18 U.S.C. § 371." *United States v. Klein*, 247 F.2d 908, 916 (2d Cir.1957), *cert. denied*, 335 U.S. 924 (1958) (false return). This is a *no return* case, as Count One boldly confesses. "FLEMING failed to file federal individual, corporate, trust or partnership income tax returns ...." Count One (p. 11 ¶ C.14). In sum, since, on this fact alone, Count One blatantly confesses itself insufficient for a Klein conspiracy, the panel's opinion cannot stand. *United States v. Dansker*, 537 F.2d 40, 50-51 (3d Cir. 1976), *cert. denied*, 429 U.S. 1038 (1977).

**Occam's Razor.** "Income tax" matters have been a source of wonder, confusion and self-imposed disaster for Americans since 1913. Yet, such matters are relatively straightforward. In general, the typical criminal "income tax" case concerns embezzlement (§ 7201), with penalty enhancement for the "corrupt" (§ 7212 (omnibus), added to the Code in 1954). But, the crime charged by § 371 (defrauding) is larceny by trick, a charge that is completely inapposite.

[p. 6] **Embezzlement (§ 7201) Versus Larceny (§ 371 (defrauding))—A Mere Matter of Possession.** Theft takes various forms. Embezzlement differs from larceny differs from obtaining property by false pretense. In the embezzlement case, possession is acquired rightfully, but *continued* wrongfully.

> In accordance with generally accepted law, a defendant commits embezzlement when, being in lawful possession of the property of another, he fraudulently appropriates or converts such property to his own use with the intent permanently to deprive. [footnote omitted] [*See also Moore v. United States*, 160 U.S. 268 (1895).] The misappropriation cannot constitute larceny because there is no trespassory taking from the possession of another. [footnote omitted] Indeed, it was to fill this gap in the law of larceny that the offense of embezzlement, a creature only of statute [footnote omitted] found its way into Anglo-American law. ...
>
> [Embezzlement is typically consolidated into the theft statutes, and] although not always mentioned by name[, it] is still viewed essentially as a fraudulent conversion of the property of another by a person in lawful possession.

CHARLES C. TORCIA, 3 WHARTON'S CRIMINAL LAW §§ 383, 408 (15th ed. 1995) (pp. 463-65, 511) ("WHARTON"). In the larceny case, it's the act of *acquisition* of possession, itself, that is wrongful.

> At common law, larceny is the trespassory taking and carrying away of the personal property of another with the intent permanently to deprive. [footnote omitted] It is an offense against the right of property or possession. [footnote omitted] ...

> [Wharton distinguishes larceny "by trespassory taking" and larceny "by trick."] [A] larceny by trick was committed when a defendant, with intent permanently to deprive, obtained the personal property of another by fraudulently inducing such other person to part with its possession. ... [p. 7]
>
> [Development of the law produced another form of theft: obtaining property by false pretenses.] The offense of obtaining property by false pretenses was committed when a defendant, with the intent permanently to deprive, obtained the personal property of another by fraudulently inducing such other person to part with the possession of and title to his property. ...
>
> [Theft offenses typically are consolidated by statute.] Ordinarily, however, the substantive elements of the offenses have not been changed.

WHARTON §§ 343, 382 at 347-54 & 460. Larceny by trick focuses on possession of the property; larceny by false pretense, on the title to the property. *Bell v. United States*, 462 U.S. 356, 358-360 (1983).

> If the person who receives the property acquires possession rather than mere custody, his subsequent decision to keep the property for himself may constitute embezzlement but, because there is no taking from the possession of another, it cannot constitute larceny.

WHARTON § 358 at 416.

*Klein* theory is fatally flawed. Despite the multitudinous false statements and returns in *Klein*, KLEIN no more committed a Klein conspiracy than the man in the moon! The same reality exists here.

Where the mountain stream represents the typical

"income tax" case's transaction flow (wrongful *continued possession*), the spawning salmon represents the Klein conspiracy theory's transaction flow (wrongful *acquisition of possession*). In short, the Klein conspiracy theory is exactly "bass ackwards." The operative theory for the Klein conspiracy (§ 371 (defrauding)) charges that the [p. 8] accused *acquires possession* (of that narrow scope of property owned by the United States or an "agency thereof") by trick. Yet, the factual reality in the "income tax" case is that *possession* (of property acquired by transactions with persons regularly quite distinct from the United States and any "agency thereof") has long since already occurred, *quite* lawfully, and the *continued possession* is the wrongful act. In sum, a Klein conspiracy charges larceny by trick, where "income tax" cases sound in embezzlement (§ 7201).

Klein Conspiracy Elements. The elements for § 371 (defrauding) are these: (1) {agreement by two or more persons} to defraud the United States or an agency thereof; (2) knowing and voluntary participation; and (3) an overt act. *United States v. Falcone*, 311 U.S. 205, 210 (1940); *United States v. Cure*, 804 F.2d 625, 628 (11th Cir. 1986). Since defrauding the United States, per se, is nowhere alleged, we refine to this: (1) {} to defraud an "agency thereof." From Count One, we refine to this: (1) {} to defraud the Department of the Treasury and the IRS.

> It is true that the words "to defraud" as used in some statutes have been given a wide meaning, wider than their ordinary scope. They usually signify the deprivation of something of value by trick, deceit, chicane, or overreaching. They do not extend to theft by violence. They refer rather to wronging one in his property rights by dishonest methods or schemes. One would not class robbery or burglary among frauds.

*Hammerschmidt v. United States*, 265, U.S. 182, 188

(1924). Thus, we refine: (1) {} to wrong the Department and the IRS in their property rights by dishonest [p. 9] methods or schemes.

*Wronged* how? Context is abundantly clear! Between what's excluded, theft by violence, robbery and burglary, and what's included, deprivation of something of value by trick, deceit, chicane or overreaching, § 371 (defrauding) sounds *a lot* like larceny by false pretense or trick. *Accord United States v. Caldwell*, 989 F.2d 1056, 1060 (9th Cir. 1993) (jury instructions deficient without "deceitful or dishonest means"). In short, we're talking about *acquisition of possession* of someone else's property (rights) as a direct result of the "fraud."

*Whose* property rights? It is inconceivable that a beneficiary *ever* lacks the capacity to sue or be sued. *See*, GEORGE GLEASON BOGERT & GEORGE TAYLOR BOGERT, THE LAW OF TRUSTS AND TRUSTEES § 871 (rev. 2d ed. 1995) ("BOGERT"). Yet, neither the IRS, *Diversified Metal Products, Inc. v. T-Bow Co. Trust*, 96-2 USTC ¶ 50,437 (CCH) (D. Idaho 1996) (p. 85,462 n. 3), citing *Blackmar v. Guerre*, 342 U.S. 512, 514 (1952), nor its Department, *Ruble v. United States Gov't, Dep't of Treasury, Internal Revenue Serv.*, 159 F. Supp. 2d 1381, 1382-83 (N.D. Ga. 2001), has the capacity to sue or be sued. Thus, we're not even talking about Department or IRS property rights, but those of some other, unknown party ("agency thereof?") that *does* have capacity to be a beneficiary, an undisclosed principal for which the collection agency and its department are the [p. 10] agents. Thus, the Klein conspiracy looks to the principal-agent language.

> To conspire to defraud the United States means primarily to cheat the government out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest.

*Hammerschmidt* at 188.

The operative part of element (1) is this: {} to defraud the Department of the Treasury and the IRS ... through deceit, craft, trickery and dishonest means. This defines larceny by deceit or trick. And, the federal common law, i.e., not any statute, hodgepodges § 7201 and § 7212 together to conjure the added mens rea component, which is this: for the purpose of impeding, impairing, defeating, and otherwise obstructing the lawful functions of the IRS in the ascertainment, computation, assessment, and collection of federal taxes. Thus, a Klein conspiracy charges a larceny by trick offense that is rather narrowly defined, in part by the limited scope of property, and in part by the additional mens rea element of having the purpose of obstructing or impeding the lawful function of the IRS. *Cf.* § 7212.

Some Examples. Those who (1) knowingly sell defective computers to the CID at the full price, with the intent of adversely affecting the lawful function of the CID, or who (2) through constructive eviction (noise, aroma, etc.), and with the intent to do so, interrupt the normal activities of the Collections Department but still charge the full agreed lease amount, at least qualify for a Klein conspiracy [p. 11] charge. Contrast these. (3) Where the defense contractor charges $1,200 for a screwdriver, that act of deceit or trickery produces *acquisition of possession* of property from the DoD, but where's the intent to mess over the IRS? And (4) if an employee of an "agency thereof" falsifies a travel voucher or travel expense report, again, there's an *acquisition of possession* of property via deceit, but where's the intent to mess over the IRS? In sum, it's possible to picture fact patterns that actually satisfy the Klein conspiracy definition, but it *takes* the imagination to get there, not this case, not even *Klein!*

**Conclusion.**

Count One *does not* allege the Klein conspiracy (larceny by trick) it defines. Nowhere does it allege that

ownership of one red cent of property or "value" identified was first in the possession of the Department or the IRS. Nowhere does it allege that FLEMING or ARNOLD or anyone else *acquired possession* of anything *from* either the Department or the IRS, by any means, much less by trick or any other dishonest means. There is no "defrauding" here. This is not a larceny case. Count One is insufficient on its face. It alleges no crime, confers no subject matter jurisdiction and is properly dismissed. It should *never* have been tried, and ARNOLD should be released pending appeal. [p. 12]

**Point: Where ARNOLD is charged solely as a conspirator, is it error to sentence him as a principal?**

Sentencing: A Ramshackle Spectacle! What the Indictment says and what the Judgment is based upon are two *entirely* different cases. "Claim of right" issues shout from the page! Count One says nothing about anyone's "taxes" but *FLEMING's*. (Even Count Five charges ARNOLD with respect to *FLEMING's* "taxes.") Thus, there can be *one and only one* bill, *FLEMING's!* How in the *world*, then, does *ARNOLD* end up with *his own* "tax" bill? If ARNOLD is a conspirator for FLEMING's "taxes," why do ARNOLD's "numerics" include *two year's "taxes" not included in FLEMING's?! Cf.* Ex. 4 (2 App.) "Returns" 1, *with* Ex. 7 (FLEMING's "numerics" cover 1993-1996; ARNOLD's, 1996-1998). Thus, ARNOLD was *not* sentenced as a *conspirator* regarding *FLEMING's* "taxes," but rather as a *principal* for the entity's (entities') "taxes," a charge *nowhere* found in the entire Indictment! Since the sentence imposed against ARNOLD has *nothing* whatsoever to do with *FLEMING's* "taxes," does that not *confess* that the "gross *business* income" is the *entity's*, not *FLEMING's?!* Does that not *confess* that the entire case was about the business *entities*, not *FLEMING?*

FLEMING is the alleged "responsible party" for at least one of a group of business *entities* operated by so-called "tax protestors." But, for there to be "responsible party," there must first be a liable entity. So, *where* is the liable [p. 13] entity? None is found in the Indictment or the trial transcript. Thus, no *tax deficiency* [(underpaid) "(net) tax imposed"] was ever pled or proved, not for any entity or any individual. This speaks for itself, since the Indictment nowhere mentions expenses, much less payments. (*No return* and *false return* cases differ greatly.) It takes getting to *sentencing* even to find such figures. But such figures are not merely a matter for sentencing. The existence of a "value" at risk of loss is a gravamen element for any theft charge. Essential elements of the case in chief must be pled and proved. Where is the liable entity?

Then, there's the "double taxation" scam. As identified in ARNOLD's First Affidavit, the beneficiary "taxed" ARNOLD for *another 75%* of the *same* "gross *business* income" for 1996. This creates its own conspiracy to commit larceny by trick issue, as well as a rather unique simultaneous double jeopardy problem.

Still another problem that arises from confusion about § 7201 is the distinction between *valuation* cases and *payment* cases. Section 7201 contains its own internal gradation, one that distinguishes the sum certain *payment* cases from the uncertain amount *valuation* cases. Without this distinction between *payment* and *valuation*, the *valuation* case wouldn't be possible to prosecute. So, where this Judgment issues a *mandamus* for a *payment* case never even pled, much less proved, Ex. 1 p. 4 (ARNOLD's Judgment), it ventures into unauthorized territory. [p. 14] Additionally, the mandamus is quite vague as to whose "taxes" we're even talking about, *FLEMING's*, per Count One, or *ARNOLD's*, per Ex. 7?

**Conclusion.** At sentencing, ARNOLD was charged, tried and convicted on charges *nowhere* found in the entirety of the Indictment, much less Count One!

**Debtor's Prison.** Regarding the fatal taint from any criminal charge based upon "employment" "taxes," *see* Ex. 7, there is no criminal liability because there is no caption. WHARTON § 365.

## Conclusion and Relief Requested

Count One defines a Klein conspiracy (larceny by trick), but wholly and completely fails to allege any such criminal violation. Further, it facially confesses, among other things, (a) the inapplicability of *Klein* (no return; no larceny), (b) the absence of any "value" at risk of loss (no *tax deficiency*) and (c) debtor's prison ("employment" "taxes"). And, since ARNOLD was sentenced for crimes never even charged, the due process violations scream from the page!

This appeal is clearly *not* "for purposes of delay." ARNOLD is not a flight risk, nor even a remote threat to himself or to society. And, *there is no case against him!* (There's no case against *anyone* from this Indictment!)

Therefore, ARNOLD requests that this court order all appropriate parties to release him pending conclusion of this appeal.

[p. 15]

Respectfully submitted,

William A. Arnold, III,
in my FEDERAL CAPACITY as
WILLIAM ALLEN ARNOLD
4342 Forest Road
Columbus, GA 31907

## Certificate of Service

By my signature below, I certify that I have served, or caused to be served, either by first class mail (certified,

return receipt requested) or hand delivery, a true and correct copy of this Motion, and Exhibits 7 to 13, on the following:

Susan H. Raab
Tamra Phipps
Assistant United States
Attorneys
Appellate Division
300 North Hogan Street
Suite 700
Jacksonville, FL 32202

Paul I. Perez, Jr.
United States Attorney
Middle District of Florida
400 North Tampa Street
Suite 3200
Tampa, FL 33602

True and correct copies of the Motion also served on the following:

Sheryl L. Loesch
Clerk of Court
United States District Court
Middle District of Florida
300 North Hogan, Suite 9-150
Jacksonville, FL 32202

Defense counsel of Record

WILLIAM ALLEN ARNOLD

Rule 14(i)(ii)

**Additional relevant opinions, orders, and etc.**

**28 May 2003** Final Judgment at trial (p. 7 under separate cover)

AO 245B (3/01 Rev. locally 9/01)
Sheet 1 - Judgment in a Criminal Case

FILED 2003 MAY 28 A 11:31
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

*UNITED STATES DISTRICT COURT*
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

**JUDGMENT IN A CRIMINAL CASE**

UNITED STATES OF AMERICA
v.
WILLIAM ALLEN ARNOLD

CASE NO. 3:00-cr-262-J-20HTS
Defendant's Attorney: Pro Se

**THE DEFENDANT:**
__ pleaded guilty to Count .
__ pleaded nolo contendere to count(s) which was accepted by the court.
X was found guilty on Count One of the Indictment after a plea of not guilty.

**ACCORDINGLY**, the Court has adjudicated that the defendant is guilty of the following offense(s):

| TITLE & SECTION | NATURE OF OFFENSE | DATE OFFENSE CONCLUDED | COUNT NUMBER(S) |
|---|---|---|---|
| 18 U.S.C. 371 | Conspiracy to defraud the United States Department of Treasury for the purpose of impeding or obstructing the Internal Revenue Service. | November 1999 | One |

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and the Mandatory Victims Restitution Act of 1996.

__ The defendant has been found not guilty on count(s)
__ Count(s) (is)(are) dismissed on the motion of the United States.

**IT IS FURTHER ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: 256-70-3609
Defendant's Date of Birth: December 24, 1946
Date of Imposition of Sentence: May 28, 2003
Defendant's USM No.: 21415-018
Defendant's Mailing Address: 4342 Forest Rd,
Columbus, GA 31907

Defendant's Residence Address: 4342 Forest Rd.
Columbus, GA 31907

CERTIFIED A TRUE COPY
SHERYL L LOESCH. CLERK /s/ Harvey Schlesinger
U. S. DISTRICT COURT HARVEY E. SCHLESINGER
UNITED STATES DISTRICT JUDGE

By: /s/
Deputy Clerk

DATE: May 28 2003
1248

AO 245B (3/01 Rev. locally 9/01)
Sheet 2 - Imprisonment
Defendant: WILLIAM ALLEN ARNOLD
Case No.: 3:00-cr-262-J-20HTS Judgment-Page 2 of 6

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **12 months**.

_ The court makes the following recommendations to the Bureau of Prisons:

_ The defendant is remanded to the custody of the United States Marshal.
_ The defendant shall surrender to the United States Marshal for this district.
_ at _ a.m./p.m. on _
_ as notified by the United States Marshal.

X The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.
X before 2 p.m. on **Friday, June 27, 2003**
_ as notified by the United States Marshal.
_ as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

[blank]

Defendant delivered on ___ to _____ at _____, with a certified copy of this judgment.

_____
United States Marshal

By:_____
Deputy Marshal

AO 245B (3/01 Rev. locally 9/01)
Sheet 3 - Supervised Release
Defendant: WILLIAM ALLEN ARNOLD
Case No.: 3:00-cr-262-J-20HTS Judgment-Page 3 of 6

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of **two (2) years**.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

While on supervised release, the defendant shall not commit another federal, state, or local crime, and shall not possess a firearm, ammunition, or destructive device as defined in 18 U.S.C. § 921.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

The drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.

The defendant shall comply with the following standard conditions that have been adopted by this court.

**STANDARD CONDITIONS OF SUPERVISION**

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instruction of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician, and shall submit to periodic urinalysis tests as directed by the probation officer to determine the use of any controlled substance;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall

permit confiscation of any contraband observed in plain view by the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

14) if this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

AO 245B (3/01 Rev. locally 9/01)
Sheet 3a - Supervised Release
Defendant: WILLIAM ALLEN ARNOLD
Case No.: 3:00-cr-262-J-20HTS Judgment-Page 4 of 6

**SUPERVISED RELEASE**

The defendant shall also comply with the following additional conditions of supervised release:

__ The defendant shall participate in the Home Detention program for a period of __. During this time, defendant will remain at defendant's place of residence except for employment and other activities approved in advance by the defendant's Probation

Officer. Defendant will be subject to the standard conditions of Home Detention adopted for use in the Middle District of Florida, which may include the requirement to wear an electronic monitoring device and to follow electronic monitoring procedures specified by the Probation Officer. Further, the defendant shall be required to contribute to the costs of services for such monitoring not to exceed an amount determined reasonable by the Probation Officer based on ability to pay (or availability of third party payment) and in conformance with the Probation Office's Sliding Scale for Electronic Monitoring Services.

_ The defendant shall participate as directed in an in-patient or out-patient program approved by the Probation Officer for treatment of narcotic addiction or drug or alcohol dependency which will include testing for the detection of substance use or abuse. Further, the defendant shall be required to contribute to the costs of services for such treatment not to exceed an amount determined reasonable by the Probation Officer based on ability to pay or availability of third party payment and in conformance with the Probation Office's Sliding Scale for Substance Abuse Treatment Services.

_ The defendant shall participate as directed in a program of mental health treatment approved by the Probation Officer. Further, the defendant shall be required to contribute to the costs of services for such treatment not to exceed an amount determined reasonable to by Probation Officer based on ability to pay or availability of third party payment and in conformance with the Probation Office's Sliding Scale for Mental Health Treatment Services.

_ If deported by the Immigration and Naturalization Service, the Defendant shall not re-enter the United

States unless allowed to do so legally.

_ Defendant shall provide the Probation Officer access to any requested financial information.

_ Defendant shall be prohibited from incurring new credit charges, opening additional lines of credit, or obligating for any major purchases without approval of the Probation Officer.

_ Defendant shall perform _ hours of community service as directed by the Probation Officer.

_ Defendant shall submit to a search of his/her person, residence, place of business, or vehicle conducted by the Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

X Defendant shall cooperate with the Internal Revenue Service to pay all outstanding taxes, interest and penalites.

AO 245B (3/01 Rev locally 9/01)
Sheet 5, Part A - Criminal Monetary Penalties
Defendant: WILLIAM ALLEN ARNOLD
Case No.: 3:00-cr-262-J-20HTS Judgment-Page 5 of 6

**CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B. The defendant shall pay interest on any fine or restitution of more than

$2,500 unless the fine or restitution is paid in full before the fifteenth day after the date of Judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g).

| | Assessment | Fine | Total Restitution |
|---|---|---|---|
| Totals: | $100.00 | | |

**FINE**

The above fine includes costs of incarceration and/or supervision in the amount of $.

_ The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

_ The interest requirement is waived.

_ The interest requirement is modified as follows:

**RESTITUTION**

_ The determination of restitution is deferred until _. An Amended Judgment in a Criminal Case will be entered after such a determination. The U.S. Attorneys Office is directed to provide the necessary information to the court.

_ The defendant shall make restitution to the following victims in the amounts listed below:

_ Restitution is ordered jointly and severally with:

| Name of Payee | Total Amount of Loss | Amount of Restitution Ordered | Priority Order or Percentage of Payment |
|---|---|---|---|
| Totals: | $ | | |

_ The defendant is ordered to begin payment immediately and continue to make payment to the best of his/her ability until this obligation is satisfied. While in

custody the defendant is directed to participate in the Bureau of Prisons' Financial Responsibility Program if eligible and upon release from custody the defendant shall adhere to a payment schedule as determined by the Probation Office.

_ The defendant is ordered to begin payment immediately and continue to make payment to the best of his/her ability. While in custody the defendant is directed to participate in the Bureau of Prisons' Financial Responsibility Program if eligible and upon release from custody the defendant shall make nominal payments as determined by the Probation Office.

_ The defendant is ordered to begin payment immediately and continue to make payment to the best of his/her ability until this obligation is satisfied. While on supervision the defendant shall adhere to a payment schedule as determined by the Probation Office.

_ The defendant is ordered to begin payment immediately and continue to make payment to the best of his/her ability. While on supervision the defendant shall make nominal payments as determined by the Probation Office.

_ The defendant is ordered to immediately pay this obligation in full.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column above.

The amount of loss and the amount of restitution ordered will be the same unless, pursuant to 18 U. S.C. §3664(f)(3)(B), the court orders nominal payments and this is reflected on Sheet 6, Statement of Reasons.

**SCHEDULE OF PAYMENTS**

Payments shall be applied in the following order: (1) assessment; (2) non-federal restitution; (3) federal restitution; (4) fine principal; (5) costs; (6) interest; (7) penalties.

Payment of the total criminal monetary penalties shall be due as follows:

I. X In full
   A. X due immediately
   B. _ on or before ___.

II. _ In installments
   A. _ monthly in installments of $ over a period of _ months, to commence _ days after date of this judgment.
   B. _ in installments of $ over a period of _ to commence _ days after the date of this judgment.

Any payment ordered under Part II, must comply with 18 U.S.C. §3572, 18 U.S.C. §3664(n), and include a provision under 18 U.S.C. §3664(k) in which defendant must notify the court of any material changes in defendant's economic circumstances. Upon such notice, the court may adjust the installment payment schedule.

Special instructions regarding the payment of criminal monetary penalties pursuant to 18 U.S.C. §3664(f)(3)(A): [blank]

In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due. The defendant will receive

credit for all payments previously made toward any criminal monetary penalties imposed.

_ The defendant shall forfeit the defendant's interest in the following property to the United States: [blank]

If this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made to the Clerk, U.S. District Court, unless otherwise directed by the court.

**8 June 2003** Order–Denying (mislabeled and thus properly construed as)motion for release pending appeal

FILED
U.S. COURT OF APPEALS ELEVENTH CIRCUIT
JUN -8 2003
THOMAS K. KAHN CLERK

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

No. 03-12810-D

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM ALLEN ARNOLD,
JOSEPH WELBURN EVANS,

Defendants-Appellants

On Appeal from the United States District Court for the Middle District of Florida

O R D E R:

Appellant Arnold's "First Motion for Relief in Equity," which seeks to stay his surrender date, is therefore construed as a motion for release pending appeal. Appellant has also filed a "First Amended Motion for Relief in Equity," which seeks the same relief.

The Court notes that there is no indication in Appellant's motions or in the District Court's docket sheet that Appellant filed a motion for release in the District Court prior to filing his motion with this Court as is required by Fed.R.App.P. 9. Accordingly, Appellant's motion is DENIED WITHOUT PREJUDICE TO RENEWAL subject to Appellant['s] filing a motion for release in the District Court and the District Court's denial of that motion.

/s/ Gerald Bard Tjoflat
UNITED STATES CIRCUIT JUDGE

**11 August 2003** Order–Trial court's denial of Arnold's motion for release pending appeal

FILED
2003 AUG 11
CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**JACKSONVILLE DIVISION**

**UNITED STATES**
**OF AMERICA**
**v.** **Case No.: 3:00-cr-262-J-20HTS**
**WILLIAM ALLEN ARNOLD**
_____/

## ORDER

Before the Court is Defendant, William Allen Arnold's First Motion for Release Pending Appeal. (Doc. No. 1267, filed on June 30, 2003). This Court finds:

(1) that the Defendant is not likely to flee or to pose a danger to the safety of any other person or to the community if released;

(2) that the Defendant's appeal is for the purpose of delay;

(3) that the appeal does not raise a substantial question of law or fact that is likely to result in reversal of conviction, an order for a new trial of all counts on which imprisonment has been imposed, a sentence that does not include a term of imprisonment, or a reduced sentence.

Therefore, the Motion is **DENIED**.

**DONE AND ENTERED** at Jacksonville, Florida, this 8th day of August, 2003.

/s/ Harvey E. Schlesinger
HARVEY E. SCHLESINGER
United States District Judge

Copies to:
William Allen Arnold, pro se
A. William Mackie, AUSA
Garry Randolph, Courtroom Deputy
Law Clerk

1295

30 June 2003 Motion for release pending appeal ruled on by immediately preceding order. (For the Affidavit and Numerics, see Rule 14(i)(vi) section, *infra.*)

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | § | |
| v. | § | Case No. 3:00-cr-262-J-20HTS |
| DONALD C. FLEMING, et al. | § | |

**ARNOLD'S FIRST MOTION FOR RELEASE PENDING APPEAL**

**History of ths Motion**

During the sentencing proceedings for Arnold, Arnold made a verbal motion for a stay of proceedings, which the court denied. Docket Sheet Entries 1227, 1236.

Arnold requested release pending appeal relief from the appellate court, which relief has been denied. Because a motion for stay of proceedings and a motion for release pending appeal are not requesting the same relief, Arnold has not yet requested release pending appeal relief from this trial court.

**Motion**

While preserving all his objections, defenses and positions with respect to the Judgement entered regarding him, Fleming moves that this court grant him release pending appeal.

**Basis**

**New evidence.** The "double dipping" financial scheme used by the plaintiff against at least Fleming and

Arnold, by which scheme the numerics conjured in this matter were greatly exaggerated, has only recently been discovered.

As shown in the attached Affidavit and Exhibit, the numerics used against Arnold are anything but competent. In particular, the plaintiff has used the *same* pool of assets [p. 2] as the basis for the *separate and distinct* "tax imposed" amounts for at least these Don Fleming and Arnold That is *not* "joint liability." It's "double taxation," "double dipping."

The numerics in this case have had nothing to do with the applicable IRC provisions from the beginning. The numerics arise, in part, from perverting and corrupting claims on business entities into claims on individuals, and not even at the liability level, but at the "gross income" level, with the end result being that these numerics multiply the actual amounts involved and *grossly* exaggerate the asserted claims. In general, these numerics are completely irrelevant, in part, because there was no evidence satisfying the "tax imposed" element of § 7201 ever presented at trial, not for any business entity and not for any individual.

Based on the recently discovered fraud upon this court perpetrated by the plaintiff, in particular as regards the numerics used for purposes of Arnold's sentencing, Arnold requests that this court release him from the present voluntary surrender provision and grant him release pending appeal, generally.

Additionally, Arnold is not a flight risk or a danger to the community, as already acknowledged by the voluntary release provision.

Arnold's appeal is not for the purpose of delay. It raises substantial questions of both fact and law, and he reasonably expects reversal, remand, establishing new law or modifying existing law, or a reduced sentence.

A final thought. It is typical that one seek a "new trial" based upon the type, kind and nature of the evidence newly discovered here. The problem with a "new trial" at this stage for Arnold is that ut would be

conducted under the "current standards." Since Arnold objects to numerous aspects of the "current standards," both procedural and substantive, from the Indictment forward, by which the § 7201 cases are conducted, [p. 3] based upon the horrific example of the problem exemplified in this particular case, it is genuinely his expectation that if this matter is not reversed outright, thus saving this trial court that trial time (which may sound like BS, but it's not), that at least he will have a "new trial" by new and more equitable standards, and that others who may find themselves in similar stages of learning the hard way what this "federal income tax system" is all about, will also at least have new standards by which to evaluate and conduct their defenses.

**Relief Requested**

Arnold respectfully requests that this court grant him release pending appeal, per such conditions as this court may require.

Respectfully submitted,

William A. Arnold, III
4342 Forrest Road
Columbus, Georgia [31907]

**Certificate of Service**

By my signature below, I certify that I have served a true and correct copy of this Motion (the Affidavit and the Exhibit ("Numerics for Arnold") have already been served under separate cover) by first class mail or hand delivery as follows:

A. William Mackie
Assistant United States Attorney
600 North Hogan Street, Suite 700
Jacksonville, Florida 32202

_____
William A. Arnold, III

Rule 14(i)(iii)

**Rehearing orders, opinions, etc.**

**4 December 2003** Order–Denying Second Motion to Reconsider. (The first motion to reconsider addressed the mislabeled motions identified *supra*.)

FILED
U.S. COURT OF APPEALS ELEVENTH CIRCUIT
DEC 04 2003
THOMAS K. KAHN CLERK

**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

No. 03-12810-DD

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLIAM ALLEN ARNOLD,
JOSEPH WELBURN EVANS,

Defendants-Appellants

On Appeal from the United States District Court for the Middle District of Florida

BEFORE: CARNES and HULL, Circuit Judges.
BY THE COURT:

Appellant Arnold's "Second Motion to Reconsider" is DENIED.

6 November 2003 (Approximate Date) Motion for reconsideration ruled on by immediately preceding order.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 03-12810-DD
(without prejudice)

**UNITED STATES OF AMERICA**,
Plaintiff-Appellee,
v.
**WILLIAM ALLEN ARNOLD**,
Defendant-Appellant

On appeal from the trial court, the
UNITED STATES DISTRICT COURT,
for the MIDDLE DISTRICT OF FLORIDA
Transaction No. 3:00-cr-262-J-20HTS

## APPELLANT ARNOLD'S SECOND MOTION TO RECONSIDER

### History of this Motion

The Motion up for reconsideration is ARNOLD's (Fourth) Motion for Release Pending appeal, denied (without opinion, under the original case number) as of 16 October 2003. [p. 2]

### Motion

ARNOLD moves that this court reconsider its ruling on ARNOLD's (Fourth) Motion for Release Pending Appeal.

### Discussion

Without retyping it all here, but simply by incorporating it, ARNOLD reasserts his motion for release pending appeal.

Since ARNOLD is asking this court to review 50 years of Klein conspiracy activity, this motion intends primarily to preserve the reconsideration time period in anticipation that such additional time will allow review of ARNOLD's Brief, which also is here incorporated, generally, with emphasis focused on Points 1-4.

Standard on Review. Raised in FLEMING's Brief is the discussion from *United States v. Peter*, 310 F.3d 709 (11th Cir. 2002), which addresses further the questions on where and how *United States v. Cotton*, 535 U.S. 625 (2002), applies where the question is whether the indictment charges an offense. The defects in Count One are "jurisdictional" defects, per *United States v. Meacham*, 626 F.2d 503 (5th Cir. 1980), *cert. denied*, 459 U.S. 1040 (1982), and per *Peter*. With that issue resolved that way, it simplifies the timing question of this particular objection to the Indictment, namely that Count One charges "defrauding," i.e., larceny (by trick), not embezzlement, because lack of subject matter jurisdiction [p. 3] may be raised at any time.

No Crime Alleged. What does *defraud* mean? Per the common law canon, it means larceny, which has various forms, one of which is trespassory and another of which is trickery. What the court in *United States v. Caldwell*, 989 F.2d 1056 (9th Cir. 1993), diplomatically pointed out is that the trespassory form of "defrauding" was not applicable in the "income tax" setting. They did so by striking down advisory panel instructions that did not include some form of the "by deceit or trick" language (an essential element of larceny by trick). What ARNOLD and FLEMING are saying is that *no form* of "defrauding" (larceny) applies where the de facto question sounds in wrongful *continued* possession, rather than in wrongful *acquisition* of possession. This is borne out by Count One, which alleges no facts of wrongful *acquisition* of anything, tangible or intangible, by anyone, at any time, period. Further, since § 371 (defrauding) modifies the

common law by focusing specifically on property (rights) of the United States, it matters greatly that there exists no property of the United States, at all, subject to even the risk of loss to anyone named in this Indictment by wrongful *acquisition*, by any means, much less by trick. In short, there is no "defrauding" alleged, generally, nor is there any "defrauding of the United States" alleged, specifically, in this Indictment. For this reason, the trial court never had subject matter [p. 4] jurisdiction over Count One.

No Crime Defined. The fact that the Klein conspiracy language doesn't even define a statutory crime only supports the conclusion that the trial court lacked subject matter jurisdiction over Count One.

**Relief Requested**

Since the Judgment is void, and since Count One is properly dismissed, ARNOLD requests that this court reconsider its initial ruling denying his release pending appeal, and, upon reconsideration, order, at the soonest moment humanly possible, the warden to release ARNOLD.

Respectfully submitted,

William A. Arnold, III
In my FEDERAL CAPACITY as
WILLIAM ALLEN ARNOLD
4342 Forrest Road
Columbus, GA 31907

**Certificate of Service**

By my signature below, I certify that on this the ____ day of _____, 2003, I have served, or caused to be served, by first class mail (certified mail, return receipt requested) or hand delivery, a true and correct copy of this Motion on the following: [p. 5]

Susan H. Raab
Tamra Phipps
Assistant United States
Attorneys
Appellate Division
300 North Hogan Street
Suite 700
Jacksonville, FL 32202

Gerald S. Bettman
Blackstone Building
Suite 1027
233 East Bay Street
Jacksonville, FL 32202

True and correct copies by first class mail have also been served on the following:

Paul I. Perez, Jr.
United States Attorney
Middle District of Florida
400 North Tampa Street
Suite 3200
Tampa, FL 33602

Sheryl L. Loesch
Clerk of Court
United States District Court
Middle District of Florida
300 North Hogan, Suite 9-150
Jacksonville, FL 32202

Defense counsel of Record of the
related cases on appeal

_____
WILLIAM ALLEN ARNOLD

CERTIFICATE OF MAILING

In order that the court have consistently legible documents, I have the originals typed/printed offsite and mailed to me. The original of this was mailed to me over a week ago, and it has not yet arrived. This original was overnighted to me on Monday, 3 November 2003. The deadline for this motion is Thursday, 6 November 2003. I have placed this signed original with this additional Certificate of Mailing into the mail at this federal correctional facility on the _____ day of November, 2003, and have instructed my sister to mail the copies as of Tuesday, 4 November 2003.

_____
WILLIAM ALLEN ARNOLD

Rule 14(i)(vi)

**Additional Essential Information**

**15 October 2003** Notice of briefing deadline

**United States Court of Appeals**
Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

**Thomas K. Kahn**
Clerk

In Replying Give Number
Of Case And Names of Parties

October 15, 2003

Gerald S. Bettman
Attorney at Law
233 East Bay Street #1207
Jacksonville FL 32202

RE: 03-12810-DD USA v. William Allen Arnold
DC DKT NO.: 00-00262 CR-3-J-20HTS

Please be advised that pursuant to 11th Cir. R. 21-1, APPELLANT'S BRIEF AND RECORD EXCERPTS ARE DUE TO BE SERVED AND FILED WITHIN FORTY (40) DAYS FROM October 9, 2003.

The above date is the date the record was deemed completed and filed, on the date the court reporter filed the transcript with the district court, as provided by 11th Cir. R. 12-1.

THIS IS THE ONLY NOTICE YOU WILL RECEIVE CONCERNING THE DUE DATE FOR FILING BRIEFS. See Fed.R.App.P. 28, 30, 31 and 32, and the corresponding circuit rules, for further information on preparing briefs and record excerpts. If you have not

entered your appearance in this appeal, please not that the clerk may not accept your **motions or other filings** . See 11th Cir. R. 46-1(d). Appearance forms are available on the court's Web site at www.ca11.uscourts.gov. Motions for extension of time to file a brief are frowned upon by the court.

In addition to providing the required number of paper copies of briefs, all parties (except pro se parties) are required, additionally, to provide briefs in electronic format as described in 11th Cir. R. 31-5 and the enclosed instructions. Electronic briefs must be in Adobe Acrobat® PDF file format. The electronic brief must be completely contained in one PDF file, i.e., cover page through and including the certificate of service. The address wrapper accompanying this letter contains counsel's individual identification number (User ID) for electronic brief uploading. When uploading a brief for the first time, you will be prompted to create a password known only by you for all future uploads.

Sincerely,
THOMAS K. KAHN, Clerk
Reply To: Nicole Jones (404) 335-6176

Encl.

BR-1 (12-2002)

30 June 2003 Arnold's Affidavit on appeal
6 November 2003 Arnold's First Amended Affidavit

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 03-12810-D

**UNITED STATES OF AMERICA**,
Plaintiff-Appellee,
v.

**WILLIAM ALLEN ARNOLD,**
Defendant-Appellant

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On appeal from the trial court, the
UNITED STATES DISTRICT COURT,
for the MIDDLE DISTRICT OF FLORIDA
Transaction No. 3:00-cr-262-J-20HTS

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**APPELLANT ARNOLD'S**
**FIRST AMENDED AFFIDAVIT**

STATE OF GEORGIA §
COUNTY OF MUSCOGEE §

I, William A. Arnold, III, in my FEDERAL CAPACITY as WILLIAM ALLEN ARNOLD, pursuant to 28 U.S.C. § 1746, do hereby depose and declare (or certify, verify or state), under the penalty of perjury, as may be defined by the law recognized by this forum, the following: [p. 2]

1. I am William A. Arnold, III, a Natural Born citizen and resident of the State of Georgia, domiciled in the County of Muscogee, recognized for purposes of this matter in my FEDERAL CAPACITY as WILLIAM ALLEN ARNOLD.
2. I am at least 21 years of age. I have personal knowledge of these facts, which facts are true and correct, and I am competent to make this Affidavit.

What's different?

3. All facts are the same. This amends the paragraph numbers from here forward and includes the reference to Exhibit 7 ("Numerics for Arnold") in the immediately following item.

The Exhibit–"Numerics for Arnold"

4. Attached is a true and correct copy of the numerics presented to me on or about 30 April 2003. It is marked for identification as, and referred in the brief as, "Numerics for Arnold." It is also referred to as Exhibit 7.

5. It is a one-page document summarizing the numerics used against me for purposes of sentencing.

Timing regarding this Exhibit.

6. I remember the timing, because this was the first day scheduled for my [p. 3] sentencing, which date was postponed for a month.
7. I remember asking myself, "What is all this?" I had not seen these figures, and certainly not in this form, personalized for me as it is, before this sheet was handed to me on 30 April 2003.
8. None of the numerics or figures or amounts, individually or collectively, were presented during the trial.

The actual meaning of "joint liability" as used in this matter.

9. I was told by the IRS Agents and by the US Attorney present, that these figures represented "income" for which I and Don Fleming (DONALD C. FLEMING) were to be held "jointly liable."
10. Joint liability is one thing. What's happening here is completely another. What "joint liability" has turned out to mean is that *one* pool of figures has been used as the basis for *multiple* claims, rather than one claim considered as "joint and several liability" among multiple people. In other words, with this one set of figures, *multiple and separate* claims have been made against various defendants in this case.
11. Specifically, I was told that the $415,793 "income" amount for 1996 was the "income" for which DONALD C. FLEMING and I were "jointly liable."
12. To make very clear, by way of example, what I'm trying to describe here, [p. 4] there's this. Let's say that the sum total of "gross income" involved for *all* parties, i.e., from the *business*, was $400,000. And, let's say that the "(gross) tax imposed" on the *business* was $30,000. I would expect a "joint and several claim" to look like this: DONALD C.

FLEMING, jointly and severally liable for $30,000; WILLIAM ALLEN ARNOLD, jointly and severally liable for $30,000; DEFENDANT XYZ, jointly and severally liable for $30,000.

"Commingled Trust *Res* Kiting."

13. But, that's not at all what's going on here. What's going on *here* is this: FLEMING shall include $400,000 in *his* "gross income," which will produce a "tax imposed" figure calculated at a Married Filing SEPARATELY rate. ARNOLD shall include that *same* $400,000 in *his* "gross income," which will produce *another* "tax imposed" figure, calculated at some rate or other. DEFENDANT XYZ shall include the *same* $400,000 in *his* "gross income," which will produce still a *third* "tax imposed," calculated at some rate or other.
14. This is the "commingled trust *res* kiting" described in the brief in the Double Jeopardy Point.
15. Thus, this $415,793 has turned out to be used as basis for at least two [p. 5] *separate* charges. Fleming was charged at the Married Filing SEPARATELY rate. I was not charged at that rate, or so it would at first appear, but I was charged *separately*, based on this exact *same* pool of figures.
16. Let me describe this another way. The *business* income attributed to FLEMING for 1996 is $554,390. The amount attributed to me is $415,793. The business *did not make* $970,183! If these commingled figures reflect any modicum of reality, the business made $554,390, *all* of which was attributed to Fleming as *his* "gross income," and *another* 75% of that *same business* income was attributed to me as *my* "gross income." THAT IS NOT JOINT AND SEVERAL LIABILITY. THAT IS "COMMINGLED TRUST *RES* KITING," pure and simple.

The Investigation is new and is continuing.

17. It is still under investigation as to how many others

have been charged as "jointly liable," actually meaning *separately and multiply* liable, for this *same* (business) "income."

18. It is still under investigation as to how many others have been charged as "jointly liable," meaning *separately and multiply* liable, for the other two Fiduciary Years shown in this "Numerics for Arnold" sheet. [p. 6]
19. It is still under investigation how the "expenses" were distributed multiply, if at all, as well as how the "forced withholding" was distributed multiply, if at all. For example, it would appear that where I got (another) 75% of the "income," attributed also to me was (another) 75% of the "expenses."
20. JOYCE FLEMING will confirm that during the return to her (and DONALD C. FLEMING) of some 46 boxes of documents, the person returning those boxes said that the "pertinent information material to the case" has not been returned, but that the documents returned were for her use for her "taxes," and that there is no intention of anyone's returning those "material" documents. So, this newly developed study by these defendants may take a while, and we may not have all the evidence that is available in this matter.

Irrelevance for trial *and* sentencing.

21. The figures in this exhibit in no way represent or summarize the evidence presented at trial. There was no evidence of "gross income" for me, or of "net income," "taxable income," or "tax imposed," regarding me, or any one else for that matter, presented at trial.
22. In response to receipt of these figures, I immediately filed my second Affidavit, filestamped 1 May 2003, in the trial court Record, Docket Sheet [p. 7] entry 1232, entered 2 May 2003, which asserted my objections to all of these figures.
23. Also, and further, since these figures are so clearly

identified with and to *me*, these figures have nothing to do with any (additional) alleged fiduciary liability of FLEMING, which was and is the sole issue tried. Thus, these figures confess themselves as being irrelevant on their face for any trial or sentencing purpose in this case, as regards me or anyone else. This trial was not about *my* "income." It was about FLEMING's. And, *his* "income" has been multiplied by at least that next additional 75%, as seen in these "Numerics for Arnold."

Formal Request for Board of Inquiry.

24. While we contemplate what we'll do with this newly discovered evidence, I formally request that a Board of Inquiry be established to investigate the malicious prosecutorial conduct exhibited in this case and the fraud upon the court that has resulted

_____
WILLIAM ALLEN ARNOLD
Declarant

Date of signing: _____

[p. 8]

**Certificate of Service**

By my signature below, I certify that I have served, or caused to be served, either by first class mail (certified, return receipt requested) or hand delivery, a copy of this Affidavit, with Exhibit 7, on the following:

Susan H. Raab
Tamra Phipps
Assistant United States Attorneys
Appellate Division
300 North Hogan Street
Suite 700
Jacksonville, FL 32202

Paul I. Perez, Jr.
United States Attorney
Middle District of Florida
400 North Tampa Street
Suite 3200
Tampa, FL 33602

Sheryl L. Loesch, Clerk of Court
United States District Court
Middle District of Florida
300 North Hogan, Suite 9-150
Jacksonville, FL 32202

WILLIAM ALLEN ARNOLD

**Numerics** Numerics conjured for Fleming

Donald C. Fleming:
**SSN: 077-34-4838**

| | Calendar Year | | |
|---|---|---|---|
| | 1993 | 1994 | 1995 |
| Income | $638,702 | $685,693 | $628,114 |
| Expenses | ($471,021) | ($504,357) | ($407,378) |
| Net Income | $167,681 | $181,336 | $220,736 |
| Income tax | $51,249 | $56,255 | $71,286 |
| Self-employment tax | $11,057 | $12,370 | $13,501 |
| Total tax | $62,306 | $68,625 | $84,787 |
| Force Back-up Withholding | ($13,960) | ($45,299) | ($56,825) |
| Tax Liability (Form 1040) | $48,346 | $23,326 | $27,962 |
| Employment taxes | | | |
| Form 941 | $67,252 | $91,332 | $59,958 |
| Form 940 | $7,030 | $5,960 | $1,241 |
| **Total tax Due** | **$122,628** | **$120,618** | **$89,161** |

| | 1996 | Total |
|---|---|---|
| Income | $554,390 | $2,506,899 |
| Expenses | ($444,783) | ($1,827,539) |
| Net Income | $109,607 | $679,360 |
| Income tax | $27,897 | $206,687 |
| Self-employment tax | $10,710 | $47,638 |
| Total tax | $38,607 | $254,325 |
| Force Back-up Withholding | ($19,145) | ($135,229) |
| Tax Liability (Form 1040) | $19,462 | $119,096 |
| Employment taxes | | |
| Form 941 | $70,627 | $289,169 |
| Form 940 | $5,777 | $20,008 |
| **Total tax Due** | **$95,866** | **$428,273** |

Numerics conjured for Arnold

Al Arnold:

| | 4/1/96 to 12/31/96 | 1/1/97 to 12/31/97 | 1/1/98 to 10/5/98 |
|---|---|---|---|
| Income | $415,793 | $547,194 | $626,254 |
| Expenses | ($333,587) | ($422,732) | ($327,832) |
| Net Income | $82,206 | $124,462 | $298,422 |
| Total tax | $28,955 | $44,467 | $108,703 |
| Force Back-up With-holding | $14,359 | $0 | $0 |
| Tax Liability (Form 1040) | $14,596 | $44,467 | $108,703 |
| Employment taxes due | | | |
| 2Q96 (941) | $22,408 | | |
| 2Q96 (940) | $1,380 | | |
| 3Q96 (941) | $17,585 | | |
| 3Q96 (940) | $1,015 | | |
| 4Q96 (941) | $6,929 | | |
| 4Q96 (940) | $503 | | |
| **Total tax Due** | **$64,416** | **$44,467** | **$108,703** |

| | **Total** |
|---|---|
| Income | $1,589,241 |
| Expenses | ($1,084,151) |
| Net Income | $505,090 |
| | |
| Total tax Force Back-up With-holding | $182,125<br>($14,359) |
| | |
| Tax Liability (Form 1040) | $167,766 |
| | |
| Employment taxes due | |
| 2Q96 (941) | $22,408 |
| 2Q96 (940) | $1,380 |
| 3Q96 (941) | $17,585 |
| 3Q96 (940) | $1,015 |
| 4Q96 (941) | $6,929 |
| 4Q96 (940) | $503 |
| | |
| **Total tax Due** | **$217,586** |